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February 12, 1999

BY HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S. W.
Washington, D.C. 20554

Re: Notice of Ex Parte Communication in Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98;

Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147

Dear Ms. Salas:

Yesterday, on behalf of Qwest Communications Corporation ("Qwest"), the undersigned of Hogan and Hartson L.L.P.; Genevieve Morelli, Senior Vice President, Government Affairs and Senior Associate General Counsel, Qwest; and Jane Kunka, Manager, Public Policy, Regulatory and Legislative Affairs, Qwest, met with Larry Strickling, Chief; Donald Stockdale, Deputy Chief; and Michael Pryor, Policy Division; Common Carrier Bureau. The purpose of the meeting was to discuss the issues to be considered by the FCC on remand from the U.S. Supreme Court's decision in AT&T v. Iowa Utilities Board, S.Ct. No. 97-826, et al. (Jan. 25, 1999). The points made in the attached handout were discussed at the meeting. Qwest also discussed Bell Atlantic's refusal to make interconnection agreements available to other carriers if those agreements are more than a year old. A copy of Bell Atlantic's letter to Qwest on this subject is attached.

I have hereby submitted two copies of this notice to the Secretary, as required by the Commission's rules. Please return a date-stamped copy of the enclosed (copy provided).

Please contact the undersigned if you have any questions.

Respectfully submitted,

Linda L. Oliver
Counsel for Qwest Communications Corporation

Enclosures

cc: Larry Strickling
Donald Stockdale
Michael Pryor

Qwest Communications Corporation
February 1, 1999

Network Elements That Should Be Mandated Under the "Necessary" and "Impair" Test of Section 251(d)(2)

CC Docket No. 96-98
CC Docket No. 98-147

The Section 251(d)(2) standard adopted by the Commission on remand from the Supreme Court must take into account the principles and purposes of the 1996 Act:

- The purpose of Section 251(c)(3) was to make available to all competitors the economies of scale and scope of the ubiquitous incumbent local exchange carrier network.

- As the Supreme Court made clear, entrants do not need to own their own local exchange facilities in order to take advantage of ILEC network elements.

- As the FCC determined in its August 1998 Advanced Services Order, the Act applies equally to old and new ILEC investment, to voice and data services, and to circuit and packet technology.

The Supreme Court instructed the FCC to interpret Section 251(d)(2) in light of the goals of the Act:

- To eliminate entry barriers -- both legal and practical -- in the local market.
- To ensure the speedy development of local exchange competition.
- To bring competitive advanced services to all consumers.
- To ensure a diversity of service providers by making available a diversity of entry paths.
- To encourage competitive facilities investment by making it possible to enter first by using the incumbent LEC network elements, then substituting competitive facilities where economically justifiable.

Mandated Network Elements Must Be Based on the Evolution of an Advanced ILEC Network

The Commission cannot and should not make distinctions between conventional and advanced network capabilities in determining which network elements must be provided under Section 251(c)(2).

Advanced network features and functionalities are provided through advanced technology that reflects the continued evolution of the ILEC network.

LOOPS

Like other network elements, loops should be defined in terms of their functionality, not solely in terms of hardware.

Loops should include, for example:

- xDSL-equipped loops (i.e, including electronics)
- DS-1, DS-3
- OC-3, OC-12, OC-N
- Dark Fiber

TRANSPORT

Transport should be defined in technology-neutral terms.

Transport should include:

- Dedicated
- Shared
- Packet

SWITCHING

Switching should include access to any ILEC switching capability, including:

- Circuit switching
- Packet switching (including ATM, frame relay, routers, and other packet switching capability)

OSS

Operational Support Systems (OSS) should include the capabilities needed by competitors to provide and market *advanced* as well as conventional services.

Competitors need access to databases that contain updated information about ILEC plant. This information should identify, for example:

- loops that are already equipped with DSL capability
- loops that are capable of supporting DSL
- loops that have been conditioned to be attached to DSL equipment
- cable pair counts going to each customer
- deployment of DLC technology by customer

Performance standards and measurements across all metrics are critical and should be specified as part of Section 251(c)(3) obligations.

Availability of Interconnection Agreements

The Commission should order ILECs to make the terms of their interconnection agreements available to competitors without regard to the date on which those agreements were signed.

- At least one ILEC (Bell Atlantic) interprets Section 51.809(c) of the FCC's rules to allow it to deny competitors the right to take the terms of other interconnection agreements if those agreements have been in effect more than one year.

- Nothing in Section 251(i) limits the availability of interconnection agreement terms.

- The Supreme Court's recent decision granting competitors "pick and choose" rights that were previously unavailable (due to the Eighth Circuit's actions) make it essential that the terms of any interconnection agreement be available to competitors, regardless of how long those agreements were in effect.

- The "reasonable time" provision in the FCC's rule must be read in light of the Supreme Court's action overturning the Eighth Circuit's decision.

Bell Atlantic Telecom Industry Services

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New York, New York 10036
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Fax: 212-395-7600

Robin L. Calcagno
Contract Manager

February 4, 1999

Brad E. Mutschelknaus
Kelley Drye & Warren LLP
1200 19th Street NW
Suite 500
Washington, DC 20036

Dear Mr. Mutschelknaus:

Bell Atlantic received your letter requesting adoption of the interconnection agreement between AT&T Communications of New York, Inc. and Bell Atlantic in the State of New York. I am writing to inform you of a recent change that affects your request to adopt the interconnection agreement of another Competitive Local Exchange Carrier ("CLEC") under Section 252(i) of the Communications Act, 47 U.S.C. 252(i).

In its decision last week in *AT&T Corp. v. Iowa Utilities Board*, the Supreme Court of the United States reinstated Section 51.809 of the FCC's rules, 47 CFR § 51.809, which had been invalidated by the U.S. Court of Appeals for the Eighth Circuit in *Iowa Utilities Board v. FCC*, 120 F.3d 753 (1997). As the Supreme Court observed, paragraph (c) of that rule "limits the amount of time during which negotiated agreements are open to requests" under Section 252(i).[1] Section 51.809(c) provides:

> Individual interconnection, service, or network element arrangements shall remain available for use by telecommunications carriers pursuant to this section *for a reasonable period of time* after the approved agreement is available for public inspection under section 252(f) of the Act.[2]

Pursuant to this FCC rule, newly reaffirmed by the Supreme Court, Bell Atlantic is adopting, effective immediately, a time limit on the availability of interconnection agreements under Section 252(i). No existing interconnection agreement (or portion thereof) will be available for adoption by another CLEC more than one year after the date the agreement was approved by the state commission. (In the case of an agreement that itself was an adoption of a previously existing agreement, the date upon which the previously existing agreement was approved by the state commission shall be the controlling date.) Accordingly, if the agreement you have sought to adopt was approved more than one year ago (or if the agreement you have sought to adopt itself is an adoption of an agreement that was approved more than one year ago), your request is hereby denied.

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[1] *AT&T Corp. v. Iowa Utilities Board*, slip op. At 29.
[2] 47 CFR 51.809(c)(emphasis added).

Bell Atlantic believes that the one year period we are adopting for existing agreements is more than the reasonable period of availability required by Section 51.809(c), in light of the continuous legal and technological changes affecting carrier interconnection arrangements. In adopting the "reasonable period" limitation, the FCC compared interconnection agreements to interexchange carrier contract tariffs, under which a negotiated service arrangement is made available to other customers during an "availability window" of only 90 days.

While Bell Atlantic's one-year availability policy is wholly reasonable and in accordance with applicable law, we nonetheless sincerely regret any inconvenience that may be caused by the implementation of this policy. We suggest two alternatives that will enable your company to get into business right away. You may, of course, utilize Section 252(i) to adopt an interconnection agreement between Bell Atlantic and another CLEC that was approved less than one year ago (so long as such agreement is itself not an adoption of another agreement that was approved by the state commission more than one year ago). A list of the available agreements for the jurisdiction you have requested is attached for your convenience. If you plan to continue this course of action, please notify me in writing of the agreement that you would like to adopt. Upon receipt of such notification and the completed Information Request Form, I will undertake to prepare a short agreement for signature by the parties.

Alternatively, you may execute an interconnection agreement of your own with Bell Atlantic under Section 252(a) of the Act based on our current template, with a relatively short term (for example, six or nine months). This will enable you to get into business immediately, while you negotiate with Bell Atlantic a successor agreement or determine whether to pursue other options. If you would like to avail yourself of this approach, please contact Jennifer VanScoter on (212) 395-2841.

Finally, if you have any legal questions about Bell Atlantic's implementation of Rule 809(c) you may contact our counsel, John B. Messenger, on (617) 743-9026.

Very truly yours,

Robin L. Calcagno

Attachments

Bell Atlantic Interconnection Agreements Approved Since 3/1/98

New York

COMPANY	TYPE	APPROVAL DATE
COVAD	Facilities-Based	3/19/98
Marathon Metro	Facilities-Based	4/17/98
COMAV	Facilities-Based	7/6/98
Network Access Solutions	Facilities-Based	7/17/98
Computer Business Sciences	Facilities-Based	7/17/98
Sygnet Communications	Wireless	8/10/98
MGC Communications	Facilities-Based	8/25/98
Dakota Services Limited	Facilities-Based	8/28/98
Telergy	Facilities-Based	8/26/98
Teligent	Facilities-Based	10/14/98
Austin Computer Enterprises	Facilities-Based	11/2/98
Global NAPs	Facilities-Based	11/17/98
Omnipoint	Wireless	12/16/98
Metromedia Fiber Network	Facilities-Based	12/16/98